36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 513.

COURT OF CLAIMS.

[To accompany Bill H. R. No. 719.]

MAY 18, 1860.

Mr. REYNOLDS, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom were referred several bills amendatory of the act to establish a court for the investigation of claims against the United States, having had the same under consideration, respectfully report:

That the establishment of some tribunal in which claims against the government should be examined and adjudicated has at different times engaged the attention of Congress, but no definite action was ever had until the passage of the act approved February 24, 1855, organizing the tribunal known as the "Court of Claims." It seems to have been admitted from an early day that the Congress of the United States was a tribunal unsuited to the proper adjustment of private claims which depend upon the application of legal or equitable principles. This results from the nature of its organization, the number of its members, and the magnitude of the national interests which constantly engage its attention. The responsibility in such cases usually rests with a committee, and the time ordinarily devoted to the investigation of private claims is of necessity extremely limited, and scarcely in any important case sufficient for an investigation of the facts or the proper consideration of the legal or equitable principles which ought to govern the determination of all such questions. It is equally notorious that the exercise of this jurisdiction by Congress tends to the practice of corruption. The personal solicitation of claimants is oftentimes made to take the place of facts and arguments. Members are influenced by personal appeals, *ex parte* statements, and various considerations having but little reference to the merits of a claim. Claims without merit are often allowed, while others of a meritorious character are rejected. The principle upon which one Congress may allow a claim is rejected by a succeeding one, and it is believed that this inconsistency often occurs during the same Congress, and even at the same session. Having no fixed rule for its government, it has no precedents which are regarded of binding force, and

the experience of twenty years in the adjudication of private claims by Congress discloses a very great incongruity of action, and furnishes examples for the allowance of any claim which can be suggested by human assurance or ingenuity. The inducement is thus held out for the prosecution of claims without one particle of merit, for a claimant never abandons the hope that what Congress has done for another may be done for him. The rejection of a claim by one Congress is no bar to its further prosecution, and claims almost sanctified by age are constantly pressed upon its consideration, although year after year they have been presented, considered, and rejected. It is therefore entirely obvious that it is the duty of Congress to provide a tribunal in which claims can be fully and fairly investigated, and the rights of both the claimant and the government properly determined. It is also due to the government and the claimant that a claim once adjudicated by the appropriate tribunal should be forever set at rest, and to that end that every reasonable facility should be afforded for the full, careful, and deliberate investigation of every question of fact or law by which the rights of the litigants are to be determined.

It is believed also that no better reason exists for exempting the government from prosecution for just claims against it than exists in the case of individuals. Its obligations to pay its debts and perform its contracts is quite as imperative as those which rest upon other parties amenable to the laws. It is only required that its interests shall be so far protected that it may receive exact justice, and this will uniformly be awarded if its appropriate agents or officers discharge their duties, and it is not to be supposed that the government will commission partial or corrupt judges or incompetent and unfaithful officials. Under the provisions of the Constitution courts of justice have been established, to which all the rights of property, as well as the life and liberty of the citizen, is referred ; and if they are fit for the purpose of administering justice between citizens, they are equally fit to do justice between the citizen and the government. They are now empowered to determine cases in which the United States is plaintiff, and it will be difficult to show that they are not equally to be trusted to determine causes in which the United States is chosen a defendant. The different position of the party on the record works no change in the law, or in the capacity of the court to do justice; and if it is proper to allow the government of the United States to enforce its contracts against a citizen in the present circuit or district courts, it is equally proper to allow the citizen to enforce his claims and contracts against the government in the same tribunal. It has been urged at different times that it would be unsafe to intrust the determination of claims against the government to the federal courts in different States of the Union, from an apprehension of local prejudice in favor of a claimant and against the government; and yet, since its organization, in every State in the Union, and at almost every term of every federal court, controversies between the government and the citizen, in which the government was *plaintiff*, have been heard and determined by judges and juries without objection and without complaint. After this experience, it is not too much to say that power may be safely conferred

upon these courts to determine questions of legal rights between a claimant and the government in which the government is a *defendant*.

It is believed that there is no civilized country in the world where meritorious claims against the government are subjected to more intolerable delays than in our own, or in which claims of a most exceptionable character have been more frequently allowed. This is the necessary result of the system under which Congress has exercised this jurisdiction, for the honest and meritorious suitor attends year after year, in humble supplication for justice, while the unscrupulous and dishonest claimant not unfrequently finds means and appliances to receive prompt and, in some cases, favorable action.

The proper remedy for these acknowledged evils is to be found only in subjecting claims against the government to judicial investigation in the same tribunals where all other rights are determined, and thus do away with that despotic authority now enjoyed by the government of the United States, in respect of its pecuniary obligations, to act or refuse to act as it pleases. Let the citizen compel a hearing by means of judicial process when the government refuses to do him justice, and in the same forum where the debtors of the government are compelled to respect and perform their obligations.

In England the public creditor has redress in the ordinary courts of justice upon a "petition of right" addressed to the Crown, and then referred to the court of chancery to be disposed of according to law. In France claimants against the government are entitled to have their rights adjudicated in a manner similar to the practice adopted in England. In the Netherlands any branch of the government is suable in the courts of justice; and in Prussia claims against the government are examined and decided by the common courts of justice in the same manner that other causes are determined. Even in Austria, if individuals are dissatisfied with the action of the government officials, they have recourse to the courts of law and equity where the controversy is determined in the same manner as a suit between individuals, the interests of the government being represented by an officer charged with that duty. The establishment of a jurisdiction in courts of law and equity for the determination of claims against the government is, therefore, not only founded in the most obvious and clearest principles of justice, but is vindicated by the practice and experience of the most enlightened governments of the world.

There is probably no difference of opinion as to the propriety of taking this jurisdiction from Congress and conferring it upon some tribunal better adapted to the discharge of the duty.

This has been from time to time admitted in debates and reports to Congress and action suggested with a view to relieve it from the pressure of claimants, to secure full investigation, and a just decision, as well as to guard against the great delays and expense which necessarily attended the prosecution of claims of every description. Much valuable information, and many valuable suggestions relating to the subject, will be found in a report of the Committee of Claims, made by Mr. Whittlesey, of Ohio, in 1838, and in one made in 1848 by Mr. Rockwell, of Connecticut, both of which will be found in volume 3 of the reports of the committees

of the House for 1837–'38, No. 498. The only difficulty has been in determining the tribunal best calculated to achieve the object; and of the various suggestions from time to time made, none received any favorable action until 1855, when the system now in force received the approbation of Congress. The Court of Claims, with its present powers, is conceded to be comparatively useless; and the only doubt now is whether this court ought to be reorganized and its judgments made final, or whether the power to determine claims against the government may not be safely conferred upon courts already existing.

It is supposed by many whose opinions are entitled to the greatest respect that a court for the investigation of claims, located at the seat of government, having jurisdiction only in such cases, will best answer the purpose contemplated. This idea prevailed in Congress when the present Court of Claims was organized, yet the obvious error also prevailed of giving to the judgments of that tribunal no binding force, and leaving a claimant, at the end of the trial there, precisely where he began, saying nothing of the loss of time or the expense incurred. In 1824, when it was proposed to confer the powers to determine claims against the government upon the circuit courts of the United States, with an appeal in certain cases to the Supreme Court, Mr. VAN BUREN, then a senator, opposed the bill, and assigned as reasons that "it would subject the United States to be impleaded in thirty or forty different circuit or district courts, in various parts of the country, and would involve great expense and trouble. All the claims had arisen from circumstances emanating from transactions in this city. The evidence respecting them was all here. If there were many claims, the departments of the government would find themselves constantly employed in defending cases in the courts of different States. Certified copies of papers must be taken as evidence, and these copies must be prepared in the departments. The United States would not stand as good a chance to get justice done to it as the individual claimant. The government will scarcely ever get its rights. The courts and juries will always be biased in favor of the individual against the government." These, it is believed, are the principal reasons now urged for the establishment of a special court, located at the seat of government, for the determination of these claims, rather than conferring the power upon the existing federal courts.

With great respect for the source from which this argument emanates, and for those who now approve it, we are constrained to believe that it has no foundation in fact, nor support in reason. In the first place, it is based upon the assumption that, in respect to its legal rights and its pecuniary obligations, the government should have special privileges over an individual. This assumption ignores entirely the well-settled principle that when the government enters into a contract, or engages in any pecuniary transaction with an individual, it to that extent divests itself of its sovereign character, and assumes that of a private citizen. Its rights, duties, and obligations are to be adjudged and considered in all respects and in all places precisely as if it were a private party; and when it approaches the altar of justice, and submits its rights to the jurisdiction of civil judges, it

comes, in all respects, as an ordinary suitor. There is no law for the citizen, in respect to obligations of a pecuniary character, which the government is not bound to observe; and it is confidently believed that there is no occasion to multiply tribunals specially devoted to the interest of government. Another error which underlies the argument is the idea that the government should have special protection from its creditors, upon the apprehension that if it has a controversy with an individual at a great distance from the city of Washington it may not stand an even chance for justice. "The courts and juries," says Mr. Van Buren, "will always be biased in favor of the individual against the government." Hence, the suggestion is to create a tribunal which, from its dependency and its location, if likely to be biased at all, will be biased in favor of the government and against the individual. If it be true that the government does not obtain its rights in the various courts of the United States, it may be regarded as singular that it has so long sought these tribunals in the capacity of a plaintiff; and if the suggestion is worthy of a moment's consideration, the judges should be impeached, the courts abolished, and others created in their stead. But the suggestion has no foundation in fact; for it is but just to say that, for learning, integrity, and impartiality, the judges who now sit in the federal courts are as far above suspicion as the judges of any other courts in the world. The legal rights of every party properly before the courts, whether it be the government or an individual, is as safe as in any other tribunal which ever has been or ever can be created. When it is considered that the disbursement of about eighty millions of dollars annually is now committed to the accounting officers of the government and heads of departments, who exercise almost abitrary power—having but few facilities for investigation, and oftentimes moderate capacity for the determination of legal rights—there certainly need be no apprehension on the part of those most solicitous to guard the public treasury in allowing an appeal from the determination of these officers to a court possessed of every facility for the investigation of facts, and from habits and study fully competent to correctly determine all questions of legal right. As there must of necessity be some tribunal to pass upon and finally determine all such questions, it is the unanimous judgment of the civilized world that they are most safely committed to courts of justice.

It is said that many of the claims against the government arise from transactions at Washington, and that the evidence respecting them is here. It is perhaps true that many contracts and transactions out of which claims arise originate in some of the departments, but it by no means follows that the evidence upon which the claims depend is to be found at Washington. Certain documentary evidence must, of necessity, be found here, but it is believed to be true in most cases that the most important evidence, both for and against the government, must be sought in the locality where the service was performed. A claim for damages growing out of a contract for the construction of a custom-house in San Francisco would not ordinarily be looked for in the records of the Treasury Department. Nor is it true, as a general rule, that any important claim can be properly de-

termined without resorting to evidence entirely beyond the control of any department of the government; and it is the constant practice of the solicitors for the government to take, or cause to be taken, the evidence of witnesses all over the United States and have it transmitted to Washington, and such is also the ordinary practice of claimants. This proceeding, of necessity, involves great delay and expense to both parties, and will in a great degree be obviated if the controversy is transferred to a tribunal convenient to the locality where the evidence is to be had, so that witnesses may be examined orally in court. The evidence relating to a claim to be found in any of the departments is of course documentary, and copies must be had in all cases, whether the court to try the claim sits at Washington or New Orleans; and if required to be made, the difficulties of transmission to any part of the United States are not so great as to furnish any reason for having a court for the investigation of claims located at Washington. The rights and convenience of claimants as well as of the United States is also to be considered, and it is much less inconvenient and less expensive to transmit copies of documents to places distant from Washington than to procure the attendance of witnesses at the seat of government from distant localities.

It is urged also that it will be inconvenient and expensive for the United States to defend causes in the federal courts in the different States. A lawsuit is always more or less inconvenient and expensive to the parties; and if the United States exposes itself to the danger of being prosecuted for debt, it is not perceived that it can properly claim any exemption from the consequences common to all litigants. It now prosecutes parties in the courts of all the States of the Union, and it may defend with equal facility and convenience if it have any defence. The district attorneys of the United States are supposed to be equally competent to defend as to prosecute suits on behalf of the government, and the expense attending these defences it is believed cannot be greater in the different localities where controversies may arise than the expenses which will grow out of a court located at Washington; and that great delay will be avoided by the distribution of this business among a large number of courts, rather than having it all thrown upon one tribunal, is too obvious to need remark.

It is believed also that it is not good policy to unnecessarily increase the patronage or power of the federal government by the creation of special tribunals of any character. There is nothing in the influences which will surround a tribunal located at Washington specially devoted to the determination of claims, which is calculated to insure a more impartial administration of justice than may be reasonably expected from courts already existing and exercising jurisdiction in all parts of the Union. If the officers of the government who are charged with the duty of defending its interests against claims made upon it from what quarter soever they may come will but discharge their duty with fidelity, there is no just ground for apprehension that any rights of the government will be put in jeopardy if submitted to the determination of tribunals enjoying public confidence, and having power to pass upon the dearest rights of every citizen of the republic.

It is, of course, impracticable to confer upon any court power to

determine any claims except such as depend upon the application of legal or equitable principles. All demands upon the bounty or favor of the government must be referred to Congress. Claims involving a determination of legal or equitable rights properly belong to courts of justice, and such claims when once determined should be finally put at rest. Upon mature deliberation, your committee are of opinion that a special tribunal located at Washington for the determination of claims is not necessary for the protection of the United States or the promotion of justice between the claimant and the government. There is no such intricacy in matters of this description as demands their withdrawal from the courts and places where the ordinary suitor seeks redress, and it is believed that none of the inconveniences which have from time to time been suggested will follow the distribution of this power among the several district courts of the United States. Your committee accordingly report a bill abolishing the present Court of Claims, and conferring jurisdiction in all cases of claims against the United States upon the district courts, to be exercised in the same manner as in controversies between individuals, with the right of appeal in certain cases to the circuit courts, and making the determination of these tribunals final. It is confidently believed that the inauguration of this system will greatly relieve Congress, and without great expense, inconvenience, or delay, secure a just determination of claims; and they accordingly present the bill designed to secure this object, and recommend its passage.